

ST 03-0008-PLR 03/12/2003 MANUFACTURER'S PURCHASE CREDIT

This letter describes how the base for determining the amount of MPC earned on the purchase of special order molds and dies is 50% of the entire service billing if no separate selling price is stated for the molds and dies (This is a PLR).

March 12, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/LegalInformation/regs/part1200/>), is in response to your letter of November 18, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

AAA hereby submits this private letter ruling request pursuant to 2 Ill. Adm. Code 1200.110. This ruling request governs all Retailers' Occupation and Use Tax periods subsequent to June 30, 2001.

**Facts:**

AAA is a manufacturer and merchant of high-voltage electrical equipment used in electrical utility and industrial operations. For purposes of its own manufacturing operations, AAA contracts for the manufacture of molds and dies with various producers of said items (enclosed are sample copies of invoices and related purchase orders). The purchased molds and dies are made according to AAA's specifications and are subsequently used to fulfill orders received from any of AAA's customers for a particular product line. Title to the special molds and dies remains vested in AAA at all times.

The Illinois Manufacturing Machinery and Equipment ('MME') sales/use exemption applies to AAA's mold and die purchases. AAA regularly claims these purchases as tax exempt and includes 100 percent of the purchase price in its Manufacturer's Purchase Credit ('MPC') computation in the year of purchase. AAA firmly believes that 100 percent of the mold and die purchase price should be included in its MPC computation base.

During a recent sales and use tax audit, the assigned auditor took the position that the aforementioned mold and die purchase transactions were subject to Service Occupation Tax ('SOT') law rather than Retailers' Occupation Tax ('ROT') law. The auditor then

limited AAA's MPC computation base for mold and die acquisitions to fifty percent of the purchase price, which is the portion of the purchase price that would be subject to tax under SOT law. Although AAA strongly disagreed with the auditor and challenged this position as an erroneous legal interpretation, we ultimately decided not to pursue any further remedy for purposes of administrative convenience.

**Question:**

Is AAA'S position that ROT law applies to its purchases of specially-made molds and dies used in the manufacturing of products for sale to its customers, and that the MPC calculation base for these purchases is 100 percent of the sales price, correct?

**Discussion:**

Illinois Administrative Code Section 130.2115(b)(1) provides the test for determining whether special order tooling is subject to SOT provisions. A seller of specialized tooling incurs SOT liability if all three conditions of subsection (b)(1) are satisfied. It is our opinion that where a mold and/or die is specially made for AAA's manufacturing operations and can be used to satisfy the requirements of any AAA customer for a particular AAA product line, the transaction fails the (b)(1) test and the seller of the specialty tooling incurs ROT liability to the extent that the item sold is not exempted under ROT law. If ROT law applies to the transaction, 100 percent of the purchase price is the proper base for computing the tax, if any, pursuant to 35 ILCS120/1.

The MME exemption is available under ROT law for machinery and equipment used primarily in the manufacture or assembly of tangible personal property for sale or lease (See 86 Ill. Adm. Code 130.330(b)(1)). The aforementioned molds and dies are principally used by AAA in its manufacturing operations, and should be regarded both as equipment for definitional purposes and as qualified for the exemption (See Id. (c)(1)). Since applicability of the MME exemption is a prerequisite for MPC eligibility, the purchase price of AAA's molds and dies should be included in its MPC computation base (See 35 ILCS 105/3-85).

The amount of computed MPC is equivalent to fifty percent of the tax that would have been incurred on qualifying purchases but for the MME exemption being available (Id.). One hundred percent of the purchase price is subject to tax under ROT law. Thus, in order to calculate the MPC on AAA's molds and dies, AAA should use 100 percent of the purchase price to determine the tax amount and then divide that amount by two to determine the amount of MPC earned.

We are not presently aware of any authority that is contrary to AAA's stated position. To the best of our knowledge, the Illinois Department of Revenue has not previously ruled on the same or a similar issue for AAA and no previous letter ruling has been requested by AAA regarding this issue. There is presently no sales and use tax audit or litigation pending with the Illinois Department of Revenue.

**Conclusion:**

Based on the above, AAA's position that 100 percent of the purchase price of specially-produced molds and dies used principally in its manufacturing operations should be included in the MPC computation base appears correct.

Your prompt review of this ruling request will be most appreciated. Thank you in advance for your consideration.

## **DEPARTMENT'S RESPONSE:**

After review of the invoices attached to your Private Letter Ruling request, we believe that the molds and dies were manufactured on special order and were subject to taxation under the Service Occupation Tax and Service Use Tax Acts rather than the Retailers' Occupation Tax and Use Tax Acts. The invoices do not separately state a selling price for this equipment apart from the charge for the design of the equipment. Therefore, Manufacturer's Purchase Credit (MPC) is calculated based on 50% of the entire billing amount for that equipment, and not 100% of the billing amount for that equipment. See Section 3-70 of the Service Use Tax Act. We believe that the base which AAA should use for the MPC calculation is 50% of the purchase price of the molds and dies.

Your letter states that you disagree and that Illinois Administrative Code Section 130.2115(b)(1) supports your position. You stated that "[i]t is our opinion that where a mold and/or die is specially made for AAA's manufacturing operations and can be used to satisfy the requirements of any AAA customer for a particular AAA product line, the transaction fails the (b)(1) test and the seller of the specialty tooling incurs ROT liability to the extent that the item sold is not exempted under ROT law." We believe that you have misinterpreted who this test under subsection (b) of Section 130.2115 is applied to. The test of whether the molds and dies were special order purchases under the provisions of subsection (b) of Section 130.2115 does not concern whether those molds and dies are used by the purchaser (AAA) to produce products for more than one customer, but rather whether those molds and dies were themselves created on special order from a serviceman for the purchaser (AAA). In other words, the test of subsection (b) of Section 130.2115 concerns whether the dies and molds were created on special order from a serviceman, rather than whether the purchaser creates special order items from those dies and molds for its own customers. We hope this clears up this misunderstanding.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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TDC:msk